IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16028 of 2005
With
SPECIAL CIVIL APPLICATION No. 16128 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI P THAKKAR - AS VAHIVATKARTA OF - Petitioner(s)
Versus
NAVINCHANDRA KANTILAL RANA - Respondent(s)

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Appearance :
MR HM PARIKH for Petitioner(s) : 1,
MR CJ VIN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 20/11/2006

COMMON ORAL JUDGMENT

By filing these two petitions being Special Civil Application No.16028 of 2005 and Special Civil

Application No.16128 of 2005 under Article 227 of the Constitution of India, the petitioner has prayed for a writ of certiorari or any other appropriate writ, order and/or direction quashing and setting aside the impugned order dated 12th March, 2005 passed by learned Joint District Judge, 9th Fast Track Court, Nadiad in Civil Miscellaneous Appeals No.226/2000 and 227/2000 whereby the learned Appellate Judge has confirmed the orders passed below injunction application (Exh.5) and Exh.13 in Civil Suit No.137 of 2000 by learned Civil Judge (S.D.), 5th Court, Nadiad on 24th July, 2000 allowing the injunction application and restraining the respondent – plaintiff from obstructing the plaintiff's possession without due process of law till the final disposal of the suit and directing the respondent to open the lock applied by him on the suit premises.

2. The respondent – plaintiff had filed an application (Exh.13) before the Trial Court for a direction to open the lock applied by the petitioner – defendant and to permit respondent – plaintiff to occupy the suit premises. The learned Trial Judge granted both the applications.

3. Being aggrieved and dissatisfied by the order below Exhs.5 and 13 passed by the learned Civil Judge (S.D.), 5th Court, Nadiad, the petiitoner – defendant preferred appeals before the District Judge and the learned Joint District Judge, 9th Fast Track Court, Nadiad, by his impugned order dated 12th March,

2005, rejected the appeals and hence, these petitions.

4. I have heard learned advocate Mr. Parikh for the petitioner and learned advocate Mr. M.B. Gohil for learned advocate Mr. C.J. Vin for the respondent.

5. It appears from the record that the respondent – plaintiff filed a suit against the petitioner – defendant for a permanent injunction claiming that he was a tenant in the suit premises. The petitioner – defendant disputed the right of the tenancy of the respondent and after considering the material on record, the learned Trial Judge, *prima facie,* found that the respondent – plaintiff was in actual possession of the suit premises. The learned Trial Judge also came to the conclusion that the respondent – plaintiff has made out a *prima facie* case and balance of convenience is in his favour and if the injunction pending the suit is not granted, then the respondent – plaintiff would suffer irreparable loss and, therefor, granted interim relief of injunction, as prayed in the injunction application, till final disposal of the suit. The learned Trial Judge also found that the petitioner – defendant had applied his lock on the suit premises and, therefore, directed him to remove the lock. The petitioner – defendant challenged the said order before 1st Appellate court wherein also, the 1st Appellate Court accepted the respondent – plaintiff's case and concurred with the *prima facie* findings

recorded by the Trial Court. In view of this, both the courts below have prima facie found the respondent – plaintiff in possession of the suit premises and also found that the petitioner – defendant had subsequently applied lock on the suit premises. The petitioner has not been able to assail the *prima facie* conclusion reached by the courts below. Therefore, in my view, as the courts below have *prima facie* come to a conclusion that the respondent – plaintiff is in possession of the suit premises, this court cannot, in writ jurisdiction, record a finding of fact contrary to the findings recorded by the courts below.

6. In view of the above, both the petitions fail and stand dismissed. Rule discharged in each petition.

7. In view of the fact that the suit is pending since long before the Trial Court, it is expected that the learned Trial Judge shall decide the suit as expeditiously as possible.

(Bankim N. Mehta, J.)

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